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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,786	11/21/2003	Edward Paul Carlin	9431	2939

27752 7590 08/10/2006

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EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/719,786	CARLIN, EDWARD PAUL
	Examiner	Art Unit
	Michael G. Bogart	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 21 July 2006.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 5-7,9-11,13,14 and 18-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 5-7,9-11,13,14 and 18-20 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 15 February 2006 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____. 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Claim Rejections – 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 5-7, 9-11, 13, 14 and 18-20 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 13 recites the combination of both grooves and protuberances on the outer portion of the insertion end. There is no single embodiment in the specification, drawings or the claims as originally filed that supports such an embodiment. Figures 1-3 show an embodiment with protuberances only, while figures 4-7 show embodiments with grooves only. See specification at page 7, lines 24 and 25, which describes the two alternative embodiments.

Regarding claims 5-7, 9-11, 13, 14 and 18-20 are rejected as being dependent upon rejected claim 13.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

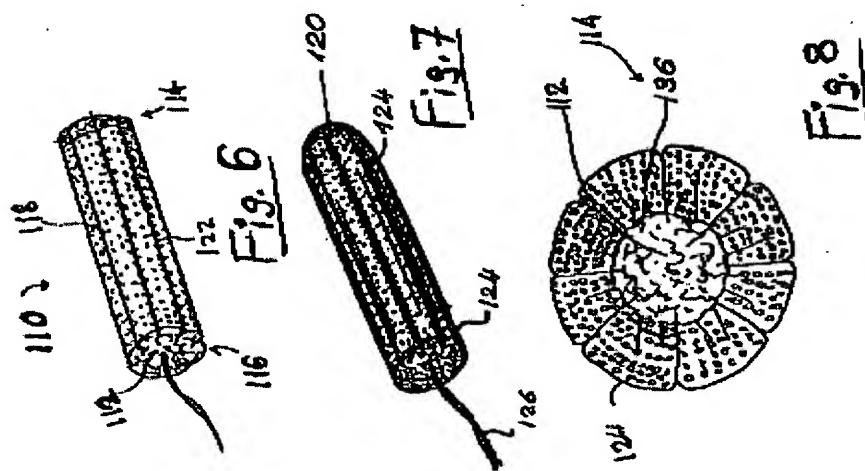
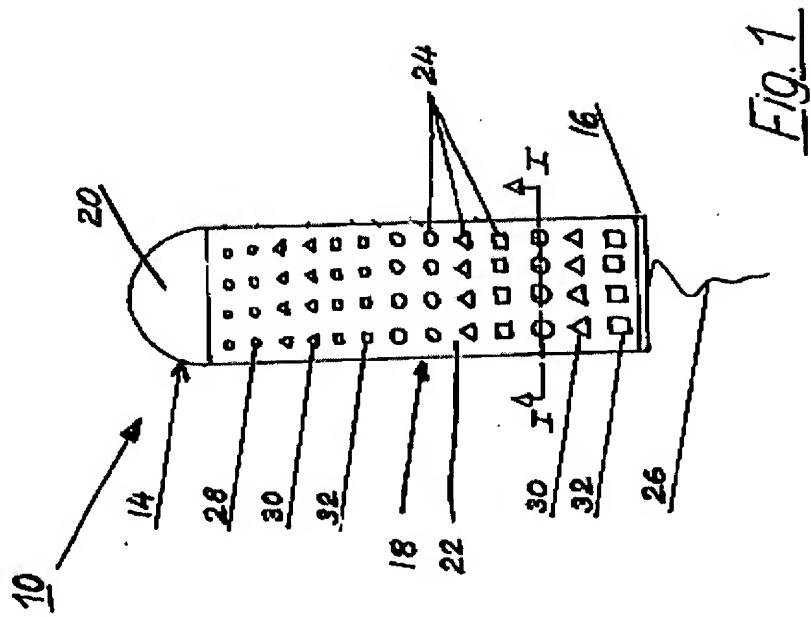
Claims 5-7, 9-11, 13, 14, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schoelling (US 2001/0014348 A1) in view of Policappelli (US 2003/0167048 A1).

Regarding claim 13, Schoelling teaches a tampon (10) for feminine hygiene comprising an insertion end (14), a withdrawal end (16), a length, a longitudinal axis, a radial axis, and an outer surface (22);

said tampon (10) being comprised of compressed fibrous material (¶'s 0011; 0012; 0034; 0036);

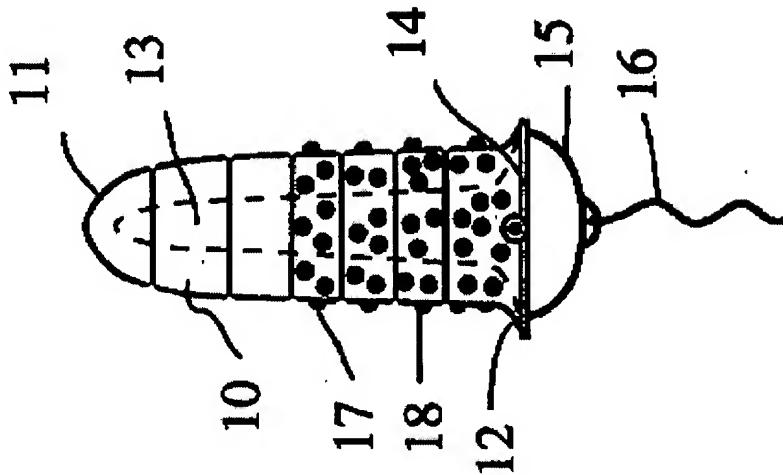
wherein a measured portion of said outer surface of said insertion end (14) comprises a first surface area and a measured portion of said outer surface of said withdrawal end (16) comprises a second surface area, said first surface area being different than said second surface area, wherein at least a portion of said first surface area comprises grooves, wherein said grooves are selected from the group consisting of longitudinal grooves, horizontal grooves and mixtures thereof (see figures 1 and 6-8, below), wherein at least a portion of the first surface area further comprises surface aberrations (28).

Schoelling is silent as to the specific length of the grooves and does not teach protuberances.



Policappelli teaches a tampon having protuberances (17, 18) on its surface (figure 1, below). These protuberances improve tampon comfort in use (¶ 0021).

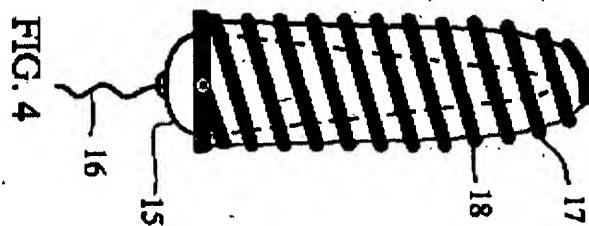
At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the protuberances of Policappelli to the tampon of Schoelling in order to provide for increased comfort for a user of the device.



Regarding the specific length of the grooves, mere changes in relative size or proportion are not sufficient to patentably distinguish a claimed invention from the prior art. In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. MPEP § 2144.04.

Regarding claims 5 and 6, Schoelling teaches a straight line or checkerboard pattern of evenly spaced surface aberrations (28)(figure 1).

Regarding claim 7, Policappelli teaches evenly spaced aberrations (fig. 4).



Regarding claims 9-11, Schoelling teaches grooves arranged in an evenly spaced straight line pattern (figures 6-8).

Regarding claim 14, Schoelling teaches longitudinal grooves (figures 6-8).

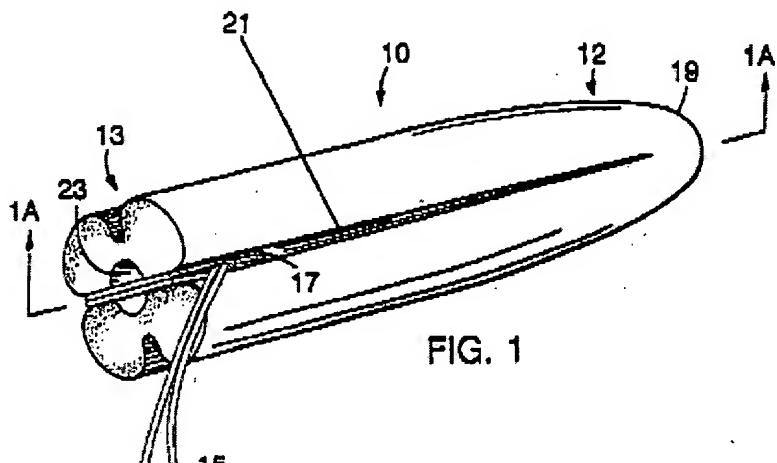
Regarding claim 18, Schoelling teaches an essentially uniform density (figure 8).

Regarding claim 19, Schoelling teaches that the entire tampon including the core is highly compressed (¶'s 0011; 0012; 0034).

Claim 20 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Schoelling and Policappelli as applied to claims 5-7, 9-11, 13, 14, 18 and 19 above, in view of Child *et al.* (US 6,283,952 B1).

Schoelling and Policappelli do not disclose a thumb indent at the withdrawal end of a tampon.

Child *et al.* teach a tampon (10) having an indent (23) at its withdrawal end (13) (see figure 1, below).



At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the indent of Child *et al.* to the tampon of Schoelling and Policappelli in order to provide a means of facilitating insertion of the device into a patient with a thumb or finger.

Response to Arguments

Applicant's arguments with respect to claims 5-7, 9-11, 13, 14 and 18-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michael Bogart
5 August 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

